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IN THE CIRCUIT COURT OF SHELBY COUNTY, TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

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BOBBY NEWCOMB,

Plaintiff,

- vs - Case No. 88913-8 T.D.

R.J. REYNOLDS TOBACCO COMPANY, and THE BROWN AND WILLIAMSON TOBACCO COMPANY, as successor by merger to THE AMERICAN TOBACCO COMPANY,

Defendants.

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Before: The Honorable D'Army Bailey

TRANSCRIPT OF PROCEEDINGS

March 18, 1999
(Afternoon Session)

Volume 35

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EDITH KARNEY, Individually, and On behalf of the Estate of JAMES WILEY KARNEY,

Plaintiffs,

- vs - Case No. 89196-8 T.D.

PHILIP MORRIS, INC., and PHILIP MORRIS COMPANIES, INC.,

Defendants.

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RUBY SETTLE, Individually, and On behalf of the Estate of RAYMOND SETTLE,

Plaintiffs,

- vs - Case No. 89226-8 T.D.

B.A.T. INDUSTRIES, PLC; BATUS HOLDINGS, INC.; BROWN & WILLIAMSON TOBACCO CORPORATION; BRITISH AMERICAN TOBACCO COMPANY, L.T.D.,

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Defendants.

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DENISE McDANIEL, Individually, and On behalf of the Estate of FLORENCE BRUCH,

Plaintiff,

- vs - Case No. 90832-8 T.D.

BROWN AND WILLIAMSON TOBACCO CORPORATION, and PHILIP MORRIS, INC.,

Defendants.

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(At 2:25 p.m., on the 18th day of March, 1999, Court met, pursuant to adjournment, when and where the following proceedings occurred, to wit:)

(Out of the presence of the jury.)

THE COURT: All right, lawyers. Are you ready for the jury?

MS. FLORENCE JOHNSON: Just a preliminary matter, Your Honor. It appears with regard to Dr. Norrell there's going to be the use of video and some sort of presentation with slides or power point or something.

We did not address the manner in which the presentation was going to be taken up with the special master yesterday. I really didn't think there was an issue, other than paper documents and compilations of things that this witness may have put together. But we would object really to the use of any sort of video, power point presentation with this witness.

The master's already ruled that the documents themselves are admissible. We're not contesting that. But I think the manner in which I believe they're attempting to be shown is somewhat misleading unless this witness can, A, say that

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these are just demonstrative aids and he put them

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all together of his own research.
THE COURT: We covered this when we were dealing with the plaintiffs' case, as far as these charts and things in terms of who put them together. And I presume that everybody understands those rules. So I don't know whether we're talking about anything beyond that or not.
MR. HANTHORN: I don't know that we are, Your Honor. We have -- Each slide that I intend to publish to the jury by virtue of putting on here was in the set that was presented to the special master. We went through each slide a page at a time and confirmed that it was supported by authenticating material and it appropriately represented what was in the authenticated material, so that I wouldn't have to be reading these types of things in but could put single pages up there.
Now, this witness did not sit down with a crayon and draw each of those slides, of course. But the authenticating material has been presented. The master has ruled on it. Each slide has been presented to the master. The documents can come in. It's just a question of I intend to display them as we're going through the testimony

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by putting them on the screen. Each slide was presented to the master as well as --
THE COURT: All right. If the slides were presented to the master, the master ruled on the slides, then I don't see what the issue is.
MR. HANTHORN: I don't think there was one either, Your Honor. I just wanted to make sure I was being clear.
MS. FLORENCE JOHNSON: I wanted to understand the manner in which the presentation was going to take place. The master ruled with the underlying documents with regard to their admissibility. My concern is that we've got this computer presentation. I don't think I've been allowed to question this witness about whether or not he's put these items together.
THE COURT: I don't know. Why don't we just go ahead and get started with it. Then if you find some reason to object, then we can approach the bench. I mean, right now we're talking in a complete vacuum.
MS. FLORENCE JOHNSON: Well, I just wanted to try to put this in perspective before this witness got on and not try to slow down the presentation.

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Now, one other point, Your Honor, with regard to what happened with the master yesterday, he indicated strictly that Dr. Norrell was going to be limited to specific areas that a historian could develop. If Dr. Norrell intends to get into any, as Mr. Hanthorn mentioned in his earlier presentation, discussing issues about whether or not the public was aware of risk, whether or not individuals knew about the --
THE COURT: I don't know. And I don't want to take up time now restating what the master said. Both of you all were there, I presume.

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MR. HANTHORN: That's correct, Your Honor.
THE COURT: And we have the transcript of it. And if Mr. Hanthorn is outside of the scope of the master's ruling, then just present me the master's transcript, and we'll address it at the bench.
MS. FLORENCE JOHNSON: Thank you, Your Honor.
MR. HANTHORN: Thank you.
THE COURT: Are you all ready for the jury?
MR. HANTHORN: Yes, Your Honor.

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THE COURT: All right.
(Whereupon, the jury was seated in the jury box.)
THE COURT: Thank you, ladies and gentlemen.
By way of scheduling, by the way, I know that one of the jurors has a matter to attend to next Thursday afternoon. And so I've already talked with the lawyers, that we are going to break early next Thursday. We won't have an afternoon session.
All right. We will continue now. And when we recessed Mr. Hanthorn was examining Mr. Norrell.
MR. HANTHORN: Thank you, Your Honor.

ROBERT J. NORRELL, Ph.D.,
having been first duly sworn by the Clerk to tell the truth, the whole truth and nothing but the truth, returned to the witness stand and testified as follows:

DIRECT EXAMINATION (Cont'd.)

BY MR. HANTHORN:
Q. Dr. Norrell, if you would make sure the microphone is still sort of where you are? Thank

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you.
Dr. Norrell, before today have you ever testified as an expert witness in court cases before?
A. Yes.
Q. About how many times?
A. About a half dozen times.
Q. And in those other in-court expert testimony cases, were you testifying on behalf of the plaintiffs, that is, the people suing the defendants, or both?
A. On behalf of the plaintiffs.
Q. What has that expert testimony involved briefly?
A. I gave historical evidence about -- testimony about issues relating to voting rights and employment discrimination on behalf of African American plaintiffs in voting rights and employment discrimination cases.
Q. Now, in the three cases that you're here today to testify about today, have you been asked to study the subject of common knowledge or awareness concerning the health risks of smoking

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from a historical perspective?
A. Yes.

Q. Do historians use the term "common knowledge"?
A. Yes.
Q. Explain how, please, sir.
A. Common knowledge is information that is commonly aware among the broad public of the United States.
Q. How is that related to awareness?
A. Well, awareness of an issue, of an event, of a situation is important to establish to determine its historical significance.
Q. And what are some examples of things that fall into the category of common knowledge?
A. Well, in terms of just things that we might have heard that are, I think, would fall into that category might be that Columbus discovered America, or George Washington was the first President, or "Don't drink and drive."
Q. How does information become common knowledge typically?
A. Well, typically it becomes common knowledge because it's circulated among the people so much that we've all heard it. We've probably read it. We may have heard it through the media. But we've also heard it discussed and repeated in

conversations among family and friends at school, church.
Q. You mentioned family. Does it pass from generation to generation?
A. Yes. We -- So much of what we learn we learn from our parents or our extended family, our grandparents and aunts and uncles. And it does pass through generations. We, in turn, try to teach our children, I think, some of this information that we call common knowledge.
Q. Now, if something is common knowledge, as the term is used by a historian, does that automatically mean that something is true or factually accurate?
A. Well, not necessarily. We -- I gave you the example of Columbus discovered America. Of course nowadays there are historians or archeologists who would say, in fact, there were Europeans who made contact with America well before Columbus did. Or I heard as a kid growing up, "Don't go swimming for an hour after you've eaten," and there are people who now say it doesn't really matter, but I still don't go swimming for an hour after eating.
Q. If something is common knowledge, does

that necessarily mean that everybody who heard it believes it?
A. No. I don't think so.
Q. Now, in this case you were focusing on the common knowledge concerning health risks of smoking cigarettes, correct?
A. Yes.
Q. In the course of your education, training

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and your own teaching, have you dealt with issues relating to tobacco and cigarettes before?
A. Well, yes. And I teach American history, the beginning course of American history. I've done that many times over the years. And I always talk about, for example, the significance of tobacco to the development of the Southern colonies. I teach courses in Southern history, and of course I talk a lot about the importance of tobacco to the Southern economy over the years from the very beginning all the way through the -- into the 20th century.
Q. Now, in your other education, training, your own teaching, have you discussed the concept of awareness before?
A. Well, sure. I am -- As I said, I focused a lot on civil rights and rights relations. And

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I've always been very interested in trying to determine what people were aware of, what they were thinking at a particular time with regard to, you know, human relations. And so it's -- it is certainly something that I'm always trying to explore, to study.
Q. Tell us how you went about performing the work you performed in these particular cases.
A. Well, I did it pretty much the way I've done all my research projects. I read secondary literature; that is, I read the books and the articles that other historians had done. I looked at the magazine -- went to the Reader's Guide of Periodical Literature and found the magazine articles that related to what I was doing. I read the New York Times Index to get the New York Times articles that reported on smoking and health.
I then went on to look for government publications, and there are quite a few of those. And then as I -- my research progressed, I looked at polling data. I looked at the lives of some of the people who have been most involved in trying to raise public awareness about this issue.
Q. You mentioned the New York Times and looking at that type of national newspaper. Did

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you also look at Tennessee and Memphis newspapers?
A. Yes.
Q. What newspapers?
A. Well, I looked at The Commercial Appeal and the Press Seminar, which doesn't -- I don't believe is published any longer. I looked at the Tri-State Defender and the Memphis World.
Q. Did you also look at national magazines?
A. Yes.
Q. What types of national magazines did you examine in your work?
A. Well, lots of different kinds. I looked at Reader's Digest and the news magazines Time and Newsweek, picture magazines Life and Look. I looked at some of the special interest magazines especially women's magazines. And I looked at some of the -- and magazines with special interest to African Americans, Jet, Ebony.
That doesn't cover them all, but that's

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most of them.
Q. Did you also look at the various Southern Baptist sunday school publications?
A. I did. You know, in growing up in Alabama and going to church, a Methodist church, I knew that there was a lot of teaching in the church
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about the dangers of smoking. And I was particularly interested because there's a very good archive of the Baptist Sunday school literature in Nashville. And there are other religious publications that I looked at but that in particular. And I found a lot of Sunday school lessons and so forth that specifically address the physical and moral evils of smoking.
Q. Did you look at any educational materials as part of your research?
A. Yes.
Q. What types of things?
A. I looked at the curriculum guides, first the laws that tell the states -- the various states where these plaintiffs went to school, what they're supposed to teach in the way of health education. And then I looked at the curriculum guides that were more specific. And I looked at the textbooks that were -- that were prescribed to be taught to implement what the course guides said should be taught to the children.
Q. And were these textbooks that were actually in use in the states that you were examined?
A. Yes.
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Q. How time consuming was conducting this review of all of these types of sources you talked to us about?
A. Well, it's -- Doing research is time consuming. Reading all those newspapers and the depositions. I worked since August somewhere between six and eight weeks on this part-time but over the eight-month period.
Q. And before that had you also begun to study the issue of smoking and health from a national perspective?
A. Yes. I had for several years done research on the subject already before I addressed these particular cases.
Q. Did you look at any video materials?
A. Yes.
Q. Where did you go to examine those? Or what did you examine?
A. Well, I examined movies and popular culture movies and television, television news. The Vanderbilt University keeps an archive of television news programs. That's -- Movies, of course, you just rent most of them.
Q. Are those the types of materials that would generally be studied and relied upon by
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historians?
A. Well, certainly if you're studying what the media and what people were being told through the public media, you should certainly look at the

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television news. The movies fall into the category typically of popular culture.

And if you're studying what entertainments -- what is being reflected in popular entertainment like movies or television or music, yes, that's typically how a historian would look at what we call popular culture, popular entertainment.

Q. During the course of your work, did you review any internal tobacco company documents that had not been released to the public?

A. No.

Q. Why not?

A. Well, my study was about what the public knew, and the public did not know the internal letters of the tobacco companies.

Q. Now, based upon your historical study and analysis, have you formed an opinion to a reasonable degree of professional certainty as a historian concerning whether common knowledge has existed throughout this century among ordinary

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people concerning the health risks of cigarette smoking?

A. Yes.

Q. What is that opinion?

A. Well, based on my research, my opinion is that the American public has known about the health risks of smoking cigarettes and that the American public has known that cigarettes were bad for your health, in fact, they can kill you, and that cigarettes were habit-forming or addictive, depending on the words used.

MS. FLORENCE JOHNSON: Objection, Your Honor.

THE COURT: All right. What's the basis of the objection?

MS. FLORENCE JOHNSON: The basis of the objection is the ruling -- Can we approach, Your Honor?

THE COURT: All right.

(Whereupon, the following discussion took place at the bench.)

MR. HANTHORN: Would it help if I just asked him to clarify that he wasn't giving a medical definition, that he was just reciting a term that he saw and what he was reviewing?

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THE COURT: Well, I thought that -- I mean, it was clear to me that that's what he was doing.

MR. HANTHORN: I thought it was too.

THE COURT: But I don't know what the objection is.

MS. FLORENCE JOHNSON: The objection is exactly that, is that he's postulating about addiction and habit-forming. If he's going to couch it in terms of what he's read, it appeared from there that he's not giving any sort of medical opinion or defining --

THE COURT: Just so we don't end up with a lot of objections on historical aspect, it was clear to me that he was -- that his statement was,

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based upon his own professional opinion, the public has known that cigarette smoking was addictive and bad for your health. Now, that, to me, is not a medical opinion that it may or may not be addictive, the fact that Mr. Hanthorn made inquiry as to whether or not the public's common knowledge was necessarily true. So I don't see any problem at all with that statement.

But, I mean, obviously he's going to probably be testifying as a historian about things

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that bear on public information pertaining to health issues. That doesn't mean that he's testifying about the truthfulness on the health issues. Otherwise we will be coming up here every few minutes.

If you want to rephrase the question --

MR. HANTHORN: Or ask a clarifying question maybe just once and then move from there and see if that gets rid of the problem.

(Whereupon, the bench conference is concluded.)

Q. BY MR. HANTHORN: Dr. Norrell, I would like to see if I can save you some time during this examination and me some steps. You used the term just now "addiction." And I think you had also mentioned "habit-forming." Am I correct whenever you use terms like that that you're not attempting to give a medical opinion, you're just reciting what you were seeing in the public awareness and the historical materials that you reviewed; is that correct?

A. That's right. I don't write prescriptions. I'm not a medical doctor. And I use "addiction" only in the sense that the public media used the "addiction" often interchangeably

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with "habit-forming." And I don't claim to have any scientific or medical usage of that term, only as it is -- was used in the reporting.

Q. Thank you, Dr. Norrell.

Now, you mentioned "common knowledge" earlier. Have you prepared a chart --

MR. HANTHORN: Ms. Johnson, it was under Tab 2 yesterday that we reviewed.

Q. BY MR. HANTHORN: -- that illustrates the scope or breadth of the level of common knowledge?

A. Yes.

MR. HANTHORN: If we could put that on the screen, please.

(Whereupon, Exhibit Number 153 was marked for identification.)

Q. BY MR. HANTHORN: Dr. Norrell, if you would like to come down, and I'll get out of your way, and please briefly explain what this chart is and what it shows us about common knowledge.

A. Okay. We use this red bar here. What this red bar is shows a 90 percent response of positive or yes when asked in 1954 the question, "Have you heard or read that cigarette smoking may cause lung cancer?" That's 1954. 90 percent answered yes to that question. And to try to put

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that into some kind of perspective, that is, to give some kind of comparison to see what that means, this 89 percent -- I think you can see the number at the top. Can't read those explanations. But it's in evidence. You'll see it. The 89 percent was the people who answered yes when or who could say George Washington when asked, "Could you name the first United States President?" That was an ABC poll in 1983.

The 75 percent measurement was people who knew that Tiger Woods was the young man who had won the 1987 [sic] Masters Golf Tournament. That was a U.S.A. Today poll right after the Masters Golf Tournament in 1997.

The 70 percent figure right here is the people who knew in 1996 from a Gallup poll that Al Gore was Vice President of the United States.

But for historical comparisons, the 69 percent rank here were the people who had read or heard in 1963 about the planned civil rights march on Washington. That's where Dr. King gave the "I have a Dream" speech. So that's the 69 percent.

The 65 percent was from a 1977 Gallup poll. 65 percent had -- of the people at that

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time, 1977, had heard or read about the lifesaving technique known as CPR.

The 54 percent rank here is from a 1973 poll of people who knew what the metric measurement system was. 54 percent knew that in 1973.

This 49 percent I put on there from a 1954 Gallup poll which was the number of people -- 49 percent of the people could identify the first book of the Bible as Genesis.

And the other 49 percent right there, also from a 1954 Gallup poll, same year as this poll -- These are comparisons over here with this particular poll at this time from the same year.

This last 49 percent were people who knew that there were two United States senators from their state. That is, they didn't have to name them. They just had to know that they had two United States senators.

And the final one, also from 1954, that 19 percent, that was the percentage of the people who could identify the three branches of the federal government: Executive, legislative and judicial. Only 19 percent of the people could do that at the same time that 90 percent of the people had heard or read in 1954 that smoking may cause

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lung cancer.

Q. Thank you. You can take your seat again.

And, Dr. Norrell, just for the record, the cheat sheet you were using was just another copy of that chart?

A. Yes.

Q. Could you keep that up for a second, please.

Now, putting aside for a moment the 90 percent of the people who answered yes to have

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heard or read that cigarette smoking may cause lung cancer. Are all of these other things that were up here ranging from 19 percent to 89 percent recognition according to Gallup and other polls, things that many of us would consider common knowledge?

A. Well, sure. I think -- I think that many of us would consider them common knowledge, but we wouldn't necessarily think that all of them -- We wouldn't have to know all of them ourselves. But that's just a sampling of a lot of the kinds of things that I think of as common knowledge and a measurement, a percentage measurement to show through a big poll how many Americans could also

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recognize that information.

Q. Thank you. And that was Trial Exhibit 153.

Now, let's step back, Dr. Norrell, and examine what type of information was out there that led to that 90 percent level of public awareness ultimately in 1954. Can you briefly describe for the Court and the jury some of the history of tobacco and its use in the New World beginning with the earliest written records?

A. Well, the Europeans discovered that the Indians had this stuff that they call tobacco. The word got changed a little bit, but that's really from the Indian word. And that Columbus -- People on the Columbus expedition were given it by the Indians, or they took it from them some way. They began to smoke it. They took it back to Europe and spread it and passed it around.

And the people who went along on the first expeditions to report on them, a very important one was a monk named Father De Las Casas, described the tobacco and its use by the Europeans, the Spaniards that he was with. And he found that they very quickly became very attached to it, made habits of using it, found it hard to quit.

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And Father De Las Casas almost immediately identified it as one of the perils, one of the bad things that Europeans were getting in the New World, but it didn't matter. I mean, it was already back there. And people were already loving it in Spain and passing it around.

Q. Were De Las Casas's diaries actually published in the 1500s?

A. Yes.

Q. So that's how we know that he said this?

A. Yes. And they're very prominent. I mean, the average reader wouldn't perhaps have read them. But they were very widely read in Spain at the time. He commented on a lot of things, especially the relationship between the Spaniards and the Indians that have been quoted ever after actually.

Q. To make sure I'm understanding how you're using the term "common knowledge," is it your testimony that a large percentage of Americans would instantly come up with the name Father De Las Casas when asked about Columbus or

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tobacco?
A. No. I mean, I don't make that claim at all. I think that -- that I use that as an example

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to show how we know about this early attitude toward tobacco from the European perspective and where it came from and the attitudes from the very beginning about it being habit-forming and bad for them.

But what is important is that the message that he put out found its way into attitudes about smoking and tobacco, and those attitudes continued down whether we remember De Las Casas or not.

Q. After tobacco was established in the New World, were there any other famous figures who wrote about tobacco in these early days?

A. Well, there were a lot of Europeans who were really fond of it, who liked it and wanted it, bought it. It became, of course, the economic underpinning of the Virginian, Maryland colonies. But it almost immediately found harsh critics. And really the most famous early critic was King James I of England who in -- King James of course is the first -- was the translator of the Bible that we at least read when I was growing up. But King James, at least four years before the King James version of the Bible was published, had written a long and very critical tract against tobacco called The Counterblaste to Tobacco.

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MR. HANTHORN: Ms. Johnson, Tab 3. I understand there's no remaining objection.

Exhibit 154, please. And if you could blow that up? Thank you very much.

(Whereupon, Exhibit Number 154 was marked for identification.)

Q. BY MR. HANTHORN: Is this an excerpt from The Counterblaste to Tobacco --

A. Yes, it is.

Q. -- that was published by King James?

What did King James have to say about this tobacco habit?

A. Well, among other things -- Let me just read the blown-up part there. He wrote in 1604: "A custom loathsome to the eye, hateful to the nose, harmful to the brain, dangerous to the lungs and in the black, stinking fume thereof, nearest rendering" -- "nearest resembling the horrible stygian" -- that means from hell -- "smoke of the pit that is bottomless."

Q. Fair to say he wasn't a fan?

A. He was against it.

Q. Now, did the Counterblaste instantly disappear after 1604?

A. No. Down through the years, even well

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into our own time, people writing about smoking and health issues have referred to The Counterblaste to Tobacco as one of the first and most prominent condemnations of smoking.

Q. Do you have a chart showing that, sir?

A. Yes.

MR. HANTHORN: Exhibit 155, the

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next-numbered tab, Ms. Johnson.
(Whereupon, Exhibit Number 155 was marked for identification.)
Q. BY MR. HANTHORN: Does this slide show some of the more modern references --
A. Yes.
Q. -- to the Counterblaste?
A. Yes.
Q. And that's the same Counterblaste that you read from on the prior slide?
A. Yes. The one on the far left is from a newspaper in 1964. The one in the middle, the one with the picture, that's a picture of King James I. That's from a Detroit newspaper in 1964.
The bottom ones are -- The one on the left, How to Live, is from a school textbook used in Arkansas.

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The one on the bottom right is a book, Smoking and -- Actually it's the cover of the Surgeon General's report in 1964.
All of those contain references to quotes from frequently -- very quote that I read to you from the Counterblaste.
Q. What import does that type of repetition and citing have with respect to common knowledge?
A. Well, I think it shows us that this information is circulated over and over down through time. And while -- You know, before I undertook this research, I didn't really know about King James's Counterblaste. Clearly it appears so often in the record over time that it is part of the background of the sort of understanding that I received as a child that smoking was bad for you.
Q. Now, you've said some negative things about tobacco. Was tobacco an important crop in colonial America?
A. Yes.
Q. How so?
A. As I said before, it was the main agricultural crop in the Southern colonies through the 1600s and 1700s and continuing into the 1800s. Though, you know, in places like Memphis along the

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Mississippi river, cotton was the far more important crop. But it continued all the way through, and into our own time tobacco is still an important crop in lots of places, including Tennessee.
Q. Let's focus for a moment on the time of the American Revolution. Was tobacco still an important crop then?
A. Yes. Very important in Maryland, Virginia, North Carolina, South Carolina, Georgia.
Q. How did you, as a historian, know that?
A. Well, I mean, I've studied the history of the Southern colonies. I've taught the course on Southern history and economics. I talked about that in American history courses to the large groups of freshmen I've taught.
Q. How are people who have simply visited Washington, D.C., confronted with that fact?

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A. Well, if you go to the Nation's Capitol up there and you look at the top of the big columns that are right there at the front, at the top they have molded out shapes of agricultural and imported agricultural crops in America. The tobacco crop is prominent among those, along with wheat and cotton.

05491

Q. So tobacco had some importance to the founding fathers, but was there any criticism of tobacco use during that time?

A. Yes. The criticism grew or continued as the popularity of the use of tobacco continued. For example, there were founders of the Declaration of Independence who were critical just as there were signers of the Declaration of Independence who grew the crop.

Q. Do you have a chart that shows us what one of those signers of the Declaration of Independence had to say?

A. Yes.

MR. HANTHORN: All right. Next-numbered exhibit, Ms. Johnson.

If I could have Tab Number 156, please.

(Whereupon, Exhibit Number 156 was marked for identification.)

THE WITNESS: Okay. Benjamin Rush was the signer of the Declaration, probably the most well-known doctor in America at the end of the 1700s, from Philadelphia, taught at the Philadelphia College of Medicine, wrote widely on health issues at the same time that he was involved in politics.

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And Dr. Rush wrote: "I've been informed of a cancer on the lip which terminated fatally" -- which killed -- "from the same cause, which was drawing the hot smoke of tobacco into the mouth by means of a short pipe."

So Rush wrote for the public about the dangers of tobacco.

Q. BY MR. HANTHORN: And that was in Essays: Literary, Moral and Philosophical?

A. Yes.

Q. Were there any other founding fathers who were critical of tobacco and had their views in print?

A. Well, one of the other well-known early critics of tobacco use was President John Quincy Adams. And President Adams noted -- had been a smoker himself and was -- and was able to quit, but wrote about it later in his life.

MR. HANTHORN: If we could have Slide 157.

The next-numbered slide in the booklet, Ms. Johnson.

(Whereupon, Exhibit Number 157 was marked for identification.)

THE WITNESS: Here in the letter he

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wrote -- In 1845 President Adams said: "In my early youth I was addicted to the use of tobacco in two of its mysteries, smoking and chewing."

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And he wrote: "More than 30 years have passed away since I deliberately renounced the use of tobacco in all its forms, and although the resolution was not carried into execution without a struggle of vitiated nature" -- that means it was hard -- "I never yielded to its impulses." That is, he stayed quit.

Q. BY MR. HANTHORN: Now, when or how did cigarettes, in particular, as a form of tobacco use, become popular?

A. Well, cigarettes were used really in a significant way the first -- initially during the Civil War. Civil War soldiers smoked them a good bit. But their really broad growth of popularity came in the 1880s. And that resulted from a couple of things. First was the invention of a machine, the Bonsack machine, which actually manufactured cigarettes. Whereas, before most cigarettes had to be rolled, hand rolled.

The Bonsack machine was a device that rolled the cigarettes and that produced cigarettes of uniform shape and size and that produced them

05494

cheaply. And that enabled producers to sell lots more cigarettes -- lots of cigarettes at a lower price. That, again, in the 1880s.

The other important thing that happened about this time was the development of a safety match. Now, prior to this time matches were really almost like having a firecracker or cherry bomb in your pocket. They would explode.

And the safety match was a real important invention because it made a small, you know, not dangerous fire, and you could keep them in your pocket. But those two things made coming together -- The mass-produced cigarettes and the match meant that a smoker could smoke a cigarette much more easily than a smoker could chew, which always requires, you know, a spittoon, a lot of spit.

And there were a lot of health objections to chewing because people were very concerned about lung problems, consumption -- tuberculosis being spread by spit. And the cigar, which took a lot more time to smoke than a cigarette. A cigarette could be smoked very quickly, in five or ten minutes.

Q. Did that coincide, then, with the growth

05495

of cities and industrialization?

A. Yes. You know, somebody working on a farm chewing or smoking a cigar or pipe was not so difficult because you're essentially -- you were your own boss. But if you were working in a factory in a city, you were much more controlled by the boss's determination of when you could take a break or not. And the cigarette was something that you could go and quickly do in an industrial workplace within a short break. Whereas, you couldn't smoke a pipe, or it's harder to chew tobacco in that circumstance.

Q. You mentioned the impact of the Civil War on the growth of popularity and cigarettes. Did

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World War I have an impact as well?
A. Yes. World War I of course came after these other things that happened. We already had mass-produced cigarettes and safety matches. And there were lots of people who were smoking cigarettes already.
But there were -- But the outbreak of war in Europe in 1914 and America's entry into the war in 1917 sent millions of Americans to war. And the cigarette was widely distributed and used by soldiers who -- and war workers. Those soldiers

05496

came home, and the popularity of cigarettes as a result of the war experience shot up.
Q. How did the cigarettes get to the soldiers?
A. The cigarettes became something that auxiliary groups like the Red Cross or the Salvation Army collected, raised money for because they were told -- the people at home were told it was a patriotic duty to give the men at the front what they wanted. And the American commander, General Pershing, had openly campaigned that what his men wanted was cigarettes. "Send cigarettes." And the public did.
Q. Now, as cigarette use became more popular, more widespread throughout all of these times, was there also an antitobacco movement that was growing?
A. Yes.
Q. Do you have a chart that identifies some of the main organizations and individuals who were criticizing tobacco from the late 1800s throughout this period you just addressed?
A. Yes.
MR. HANTHORN: Next chart, please.
Exhibit 158, next exhibit, Ms. Johnson.

05497

(Whereupon, Exhibit Number 158 was marked for identification.)
Q. BY MR. HANTHORN: Okay. We have three different publications here. Could you explain to us what the Antitobacco Journal was and when it was popular?
A. Yes. The one on the top left is a picture of the Antitobacco Journal, which was published starting in the late 1850s. And it was -- it was against all tobacco, not just cigarettes. But it continued when cigarettes became more popular. It took up that cause.
But one of the things they said: "We publish it in order to transmit a record of the ravages of tobacco on our contemporaries and to assure coming generations that we are not totally blind to the baneful effects of this great and popular poison."
So this connects to the ongoing criticism and condemnation of tobacco.
And then it gets focused, for example, on The Boy magazine, which is the one below it, which was focused exclusively on the cigarette. It's published by the National Anticigarette League, edited by Lucy Page Gaston who was a national

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campaigner against the use of cigarettes for banning cigarettes. And she published The Boy magazine and campaigned throughout the country in a variety of ways to try to get cigarettes outlawed.
Q. You mentioned she campaigned across the country. What was one of the ways that she campaigned in 1920?
A. Well, she ran for President in 1920, Lucy Page Gaston did, on the anticigarette platform, trying to run for President to try to get cigarettes outlawed.
Q. When we see Good Health magazine, this particular issue from September 1935, what was Good Health magazine?
A. Good Health magazine was the publication of -- It was a national publication campaigning for good health, all kinds of health measures. But one of the main things that they -- that they worked on all the time was trying to get people not to use tobacco in all its forms.
This is a 1935 article: "How Cigarette Smoking Harms Boys."
Good Health was edited by a doctor in Michigan named John Harvey Kellogg. And Dr. Kellogg was a national figure. He had this
05499
sanitarium where people would come to and try to improve their health. And hundreds and hundreds of people would come and stay there. And he would give all kinds of lectures. Very prominent people. Cost a lot to go there. And he used his sanitorium in this publication Good Health to promote quitting the use of tobacco.
Q. Now, where did you examine this issue of Good Health and other issues of Good Health magazine?
A. Well, Dr. Kellogg's papers are at the University of Michigan library. And he's a fascinating person. I've looked at -- read his magazines and his personal letters. He had a vast correspondence with lots of people.
Q. I can't help but ask since he's from Michigan, which is where Battle Creek, Michigan, is and his name is Kellogg, is this the inventor of the corn flake?
A. Well, I think his brother was the actual inventor. His sanitarium was in Battle Creek. So all the Kelloggs were there. It was his brother, I think, really, though, that made all the money with the cereal. And they made a huge amount -- The brother made a huge amount of money developing
05500
cereal. And Dr. Kellogg told --
MS. FLORENCE JOHNSON: Objection, Your Honor.
THE COURT: Sustained.
Q. BY MR. HANTHORN: Are there any -- Well, strike that.
What is the significance historically of the movements represented by the Anticigarette League, the publisher of the Antitobacco Journal and various movements that Mr. John Harvey Kellogg

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was connected with?
A. The significance is that there was a continuous effort on the part of many Americans to stop the use of cigarettes.
Q. And were these antitobacco groups, from what you were able to observe from the public record, getting their message out?
A. Yes.
Q. How were they getting their message out?
A. Well, through publications, through organized drives of memberships. They were organizing the public for their particular reform which was to stop smoking.
Q. Were they receiving press coverage?
A. Yes. Extensive press coverage in

05501

the -- especially in the newspapers and the magazines.
Q. Now, in the early 1900s, around the same time that these magazines were being published, were there any other well-known public figures who were also speaking out against tobacco use?
A. Yes.
Q. Who were some of those figures?
A. Well, people like Thomas Edison and Henry Ford, Booker Washington, leading men of America of the early 20th century.
MR. HANTHORN: If I could have the next-numbered slide, please, which is Number 159.
Next slide in the book, Ms. Johnson.
(Whereupon, Exhibit Number 159 was marked for identification.)
Q. BY MR. HANTHORN: What is this?
A. This is a letter from Thomas Edison, the electrical inventor, inventor of the light bulb, to Henry Ford, the founder of the Ford Motor Car Company, producer of the Model A and the Model T.
Both of these men were adequately opposed to the use of cigarettes, didn't allow people at their plants to smoke cigarettes.
Q. Now, where did you go to find a copy of

05502

this letter? Did you have to examine someone's private correspondence to see that?
A. No. This letter from Edison to Ford was reprinted in a pamphlet that Ford wrote in 1914 called, "The Case Against the Little White Slaver."
MR. HANTHORN: If we could have the next-numbered slide, please, Number 160.
(Whereupon, Exhibit Number 160 was marked for identification.)
Q. BY MR. HANTHORN: So the letter was included with this book; is that correct, sir?
A. Yes.
Q. And where have you seen copies of this book?
A. Well, this book was very widely distributed around the country and appears in lots of libraries.
Q. And what was the thrust of the book that Henry Ford was paying to have widely distributed?
A. Well, that cigarettes were very bad, that people should not use them. And he had all kinds

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of testimonies in this book from businessmen, including Edison and many other businessmen, educators like Booker Washington who were against the use of cigarettes and wanted them banned.

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Q. And, once again, did it also warn against the fact that it was a difficult habit to quit?

A. It did. It says in this one excerpt here: "Boys in school who are in the clutch of the cigarette habit become its slaves."

"The little white slaver" is the image that's used for the cigarette all the way through.

Q. And was "little white slaver" a piece of slang at the time, a common term for cigarette?

A. Yes.

Q. In addition to popular national figures like Henry Ford and Thomas Edison, were there any national political figures who were opposing smoking and taking anticigarette stances?

A. National? National political figures?

Q. Yes, sir. Around 1929.

A. Well, in 1929 Senator Reed Smoot of Utah asked the -- asked Congress to consider legislation to get the Federal Drug -- the Federal Drug Administration, the FDA, to outlaw cigarettes to control what was going into cigarettes.

Q. Now, did that legislation on that occasion become enacted?

A. No.

Q. Now, were the states -- shifting back

05504

from the federal government -- in the late 1800s and early 1900s responding to this widespread criticism of tobacco use?

A. Yes.

Q. How were they responding?

A. Well, a number of state -- lots of states -- Really most states considered laws outlawing cigarettes. And 16 states passed laws that did outlaw cigarettes. That is, in 16 states in the United States cigarettes were outlawed in the late 1800s and the early part of this century.

Q. Did Tennessee pass such a law?

A. Yes.

Q. Do you have a chart illustrating that statute?

A. Yes.

MR. HANTHORN: Number 161, please.

(Whereupon, Exhibit Number 161 was marked for identification.)

Q. BY MR. HANTHORN: Is this a copy of the statute that Tennessee passed in 1897?

A. Yes.

Q. And what did it provide?

A. It basically made it a crime to sell or give away cigarettes in the state of Tennessee.

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Q. Any cigarettes, cigarette paper or substitute for the same, correct, sir?

A. Yes.

Q. Now, did the state of Tennessee then just ignore this law? Or did the state actually enforce it?

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A. No. The state enforced it.
Q. How do we know the state enforced it?
A. Well, we know because the state enforced it and somebody got convicted and they challenged the law.
Q. And what happened as a result of that challenge?
A. Well, there was a Supreme Court decision in the case of Austin against Tennessee in 1900 where the Tennessee law was challenged.
MR. HANTHORN: Next slide, please, Trial Exhibit 162.
(Whereupon, Exhibit Number 162 was marked for identification.)
Q. BY MR. HANTHORN: Is this an excerpt from the United States Supreme Court opinion in Austin versus Tennessee?
A. Yes.
Q. And was that the lawsuit that challenged

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Tennessee's law?
A. Yes.
Q. From a historical perspective, what things does this United States Supreme Court opinion tell you about public awareness of the health risks of cigarette smoking?
A. Well, the Court determined in the course of this decision that the law had been -- was based -- the Tennessee law outlawing it was based on the belief in the minds of the legislators and of the public generally that cigarettes are wholly noxious and deleterious. That is, they're poisonous and bad for people. So the law itself recognized that the public, the people of Tennessee believed that cigarettes were poisonous and bad for them.
Q. And then what did the Supreme Court opinion tell us about the state of public awareness throughout the United States at that time?
A. Well, they found that the understanding or the knowledge that cigarettes were bad for you and poisonous was widely -- widely discussed in the public press, and that it was very dangerous. It was fraught with great dangers to the youth of both sexes. So in 1900 the Court recognizes that the

05507

public knows this, that cigarettes are bad for you. The public already knows that.
Q. Did you examine the historical record to see if the Supreme Court was correct that communications were constantly finding their way into the public press denouncing cigarettes?
A. Yes.
Q. Do you have some samples of those?
A. Yes.
MR. HANTHORN: Slide number 163, please.
(Whereupon, Exhibit Number 163 was marked for identification.)
Q. BY MR. HANTHORN: What does this slide show us, Dr. Norrell?
A. Well, these are newspaper reports about cigarette smoking. These are just articles just from the New York Times. But they're

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representative of what was seen in a lot of other newspapers.

The newspaper article at the top from 1882, is entitled "The Poison in Tobacco Smoke." The one on the top right is a story about somebody who had died in 1887, New York Times, "cigarettes killed him."

On the bottom left from 1888 in the New

05508

York Times, smoking and throat diseases as a result of cigarettes and so forth.

Q. Now, in addition to the outright prohibition of cigarettes, did states eventually pass other laws dealing with cigarettes as well?

A. Yes. All states just about, including Tennessee, passed laws that made it illegal to sell cigarettes to minors.

Q. And do you have an example of Tennessee's law on that topic?

A. Yes.

MR. HANTHORN: Number 164, the next one, Ms. Johnson.

(Whereupon, Exhibit Number 164 was marked for identification.)

Q. BY MR. HANTHORN: Is this Tennessee Sales to Minors law --

A. Yes.

Q. -- from 1919?

A. Yeah.

Q. Is this the same year that Tennessee did away with the absolute prohibition on the sale or possession of all cigarettes?

A. Yes. I believe so.

Q. And what did this other type of

05509

legislation seek to do in Tennessee and elsewhere?

A. Well, it just made it illegal to sell cigarettes to minors, people 18 and under.

Q. Now, as a historian, what does the fact that these types of statutes exist tell you, if anything, about public awareness or common knowledge?

A. Well, they tell us that the public had been paying close attention to the impact of cigarettes on health from the time that cigarettes became commonly used in the 1880s and forward and that the public acted through their representatives and the legislators to try to stop or at least to limit the use of cigarettes.

Q. In addition to prohibiting the sale of cigarettes to minors, had Tennessee taken any other legislative steps having to do with cigarettes?

A. Yes.

Q. And what was that?

A. The state passed laws that required the teaching of health education and, in particular, in the teaching of health education to teach about the dangers of cigarette smoke.

Q. Do you have a copy of Tennessee's law on that topic?

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A. Yes.

MR. HANTHORN: Trial Exhibit 165, next

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number in the book.
(Whereupon, Exhibit Number 165 was marked for identification.)
Q. BY MR. HANTHORN: Is this Tennessee's law that went into effect in 1896, health education law?
A. Yes.
Q. And what did it require teaching under physiology and hygiene?
A. It required that in -- under -- in the teaching of health that special reference to the nature of alcoholic drinks, narcotics and smoking cigarettes and their effects upon the human body and the human system shall be made a regular course of study for all pupils in all schools.
Q. Did other states surrounding Tennessee and throughout the country pass similar statutes?
A. Yes. Most --
Q. I'm sorry. I didn't mean to interrupt.
A. Most states in the country did and clearly, in addition to Tennessee, Arkansas, Mississippi, Alabama, all of them.
Q. Has Tennessee's law, as it's been enacted

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and recodified through time, continued through in effect until this day?
A. Yes. There is a similar law, a little bit more detail, on the books today.
Q. Now, did you do any research to see if Tennessee schools complied with this law?
A. Yes.
Q. What did you examine in order to make that determination?
A. Well, I examined the curriculum guides written for Tennessee schools. I examined some of the health textbooks -- actually a lot of textbooks that were assigned for use in Tennessee schools.
Q. Do you have examples of some of the earliest textbooks in use in Tennessee talking about the hazards of smoking pursuant to that statute?
A. Yes.
MR. HANTHORN: If we could have Exhibit 166, next-numbered exhibit.
(Whereupon, Exhibit Number 166 was marked for identification.)
Q. BY MR. HANTHORN: And what are these textbooks, sir?
A. The top one is a Tennessee school

05512

textbook from 1898 which said, among other things, it is -- "It seems to be clearly proved that cigarette smoking is very injurious, especially to boys. And one bad feature of the tobacco habit is that one makes himself a slave to the weed. The habit, once formed, is hard to break."
Q. Is that the physiology text?
A. Yes. And then the 1924 book entitled Health, published -- written by Turner, also assigned for use in Tennessee schools. "Tobacco contains several poisonous substances. Probably the most important of these is nicotine, which is also a narcotic."

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Q. And was that book in use in the Tennessee schools?
A. Yes.
Q. Did Tennessee have an authorized list of textbooks for use in its schools?
A. Yes, it did.
Q. And have you examined that authorized list?
A. Yes. These books are on them.
Q. Now, did you also examine textbooks that would have been in place in the schools when James Karney and Florence Bruch were in the
05513
Tennessee school system?
A. Yes.
MR. HANTHORN: If we could have the next slide, please, 167.
(Whereupon, Exhibit Number 167 was marked for identification.)
THE COURT: Why don't we go ahead before we get into that one and take a ten-minute recess.
Sheriff?
(Whereupon, the jurors were excused from the courtroom.)
(Whereupon, a 15-minute recess was taken at 3:28 p.m.)
THE COURT: All right. Lawyers, are we ready for the jury?
MR. HANTHORN: Yes, Your Honor.
(Whereupon, the jury was seated in the jury box.)
THE COURT: Thank you, ladies and gentlemen.
Mr. Hanthorn, you may continue.
MR. HANTHORN: Thank you, Your Honor.
Q. BY MR. HANTHORN: Right before we took the break I had asked you, Dr. Norrell, about the time frame when Mr. James Karney and Ms. Bruch were
05514
in school in Tennessee. Do you recall that?
A. Yes.
Q. How did you know when they were in school in Tennessee?
A. Well, I read the depositions about them.
Q. And did you also read deposition testimony in this case from Bobby Newcomb as well?
A. Yes.
Q. But he was not in Tennessee at the time or about the time he was in school, correct?
A. I believe Mr. Newcomb was in school in either Arkansas or Michigan.
MR. HANTHORN: Let's have the Trial Exhibit 167, please.
Q. BY MR. HANTHORN: Were these school textbooks, excerpt textbooks that were on the approved list in Tennessee during the time that Ms. Bruch and Mr. Karney were going through the Tennessee schools?
A. Yes. I think those plaintiffs were born in 1932-33, which means they would have been in school in the late 30s into the 1940s. And the first book there, the Burkard book published in 1936, typically would go on the approved list

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sometime after its publication date. So it would have been -- This would have been one of the books used in Tennessee schools during the time that Ms. Bruch and Mr. Karney were in school here. The --

Q. I'm sorry. Go ahead.

A. The top book, the Health by Doing book, had an excerpt read in part that, "The tobacco habit grows on most people. That is, it gets worse. They smoke more and more until they are smoking all the time. Bad habits are hard to stop. Do not start them."

This is obviously an elementary school textbook written for a young child.

Q. Was the Fowlkes, Making Life Healthful, also containing fairly specific information and warnings?

A. Yes. The Fowlkes textbook published a little bit later for the older child read: Tobacco contains nicotine, which is a narcotic, habit-forming and poisonous drug. Again, it's "habit-forming" and "poisonous drug" is reiterated in the textbooks.

The Fowlkes's book also says: "There's good evidence that tobacco smoke is definitely irritating to the mucous membrane of the mouth and nose, the throat and the lungs."

Q. Now, were these the only Tennessee school textbooks that you reviewed during this time frame?

A. No. There were others. There were others as well. I think I have an exhibit on them too.

Q. Well, even during this time frame, though, were there also others that contained similar material?

A. Yes. Essentially all the textbooks that were on the approved list had these kinds of warnings in them about smoking being bad for the health, being habit-forming, being poisonous. The language in all of them is very similar, and that's because that's really what the schools were looking for, and thus the publishers gave them what the schools wanted to teach.

Q. Now, you mentioned that you had some more Tennessee textbooks.

MR. HANTHORN: Let's see Number 168, please.

(Whereupon, Exhibit Number 168 was marked for identification.)

Q. BY MR. HANTHORN: And would this next exhibit cover the time, among other times, when Mr. Bobby Newcomb was in high school in Tennessee?

A. Yes. This comes in -- These are books used in the 1940s and early 1950s. The first one, Modern Ways to Health, 1943, reads in part: "Recently a scientist studied the subject of longevity and concluded that persons who are habitual smokers for many years usually do not live so long as others who smoke moderately or do not smoke at all," 1943. I think that probably refers

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to Dr. Raymond Pearl's study at Johns Hopkins in 1938 which was widely published.

Q. And was the Burkard textbook series continuing to be used throughout Tennessee as well?

A. Yes.

Q. Did it continue to have the same type of information that we've seen in previous slides?

A. Yes. The same focus on habit-forming, the habit-forming nature of it, more emphasis on harmfulness to lungs as well.

Q. Did you also examine textbooks in Michigan and Arkansas?

A. Yes. Mr. Newcomb attended school in Michigan and Arkansas. And those states see very similar health education laws, very similar curricula about health education that directly

05518

address cigarette smoking. And you also see textbooks prescribed to do the same thing.

MR. HANTHORN: Slide 169, please.

(Whereupon, Exhibit Number 169 was marked for identification.)

Q. BY MR. HANTHORN: And are these examples of the textbooks under recommended or required lists in Arkansas and Michigan during the time that Mr. Newcomb was attending school in those two states?

A. Yes. The Burkard textbook from 1936 we have already seen. And they're using that same book in Tennessee.

Q. In fact, was that common for these books to be used on an approved list in multiple states?

A. Yes. These books are all published by national publishers, and they sell -- This book, Health by Doing, they sell nationally. Nearly all these books, they sell nationally.

The Michigan -- And one of the books approved in Michigan was a book entitled Healthful Living, 1941, corresponding to the time that Mr. Newcomb was in Michigan. And it was quite specific in 1941 about -- that inhaling the smoke of cigarettes inflames the mucous lining of the

05519

bronchial tubes and air cells. There may result from this an irritating cough, short breath and chronic bronchial catarrh -- spitting.

Q. Now, in addition to textbooks, did you examine other material that was being used in the schools as part of education about smoking and health?

A. Yes. Schools in addition to -- used other curriculum materials in addition to textbooks in its earlier period, including filmstrips. And the American Cancer Society produced filmstrips and made them widely available in schools.

Q. Do you have with you today a videotape of excerpts of two of those American Cancer Society filmstrips?

A. Yes. I selected two: One entitled "To Smoke or Not to Smoke," another entitled "I'll Choose the High Road."

MR. HANTHORN: If we could play Trial Exhibit 170, please.

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(Whereupon, Exhibit Number 170 was marked for identification.)
(Whereupon, the following videotape was played.)
("To Smoke or Not to Smoke?" 1960.)

05520

NARRATOR: Most lung cancer patients are cigarette smokers. Most lung cancer patients have smoked for years. Surveys show that of those who've died, ten times as many cigarette smokers as nonsmokers died of lung cancer.
And the more one smoked, the greater the risk. Smoking is a definite risk. How much a person smokes, how much a person inhales, for how many years, all these factors are important.
Once you get the habit, it's hard to break. Everyone knows how hard it is to break the cigarette habit.
Science continues to learn more about how cigarette smoking causes lung cancer, searching out new facts, facts which enable people to make decisions. For it is up to people, individuals to put to use the knowledge science brings.
To smoke or not to smoke? It is your decision. What you decide may determine your future.
("I'll Choose the High Road," 1962.)
NARRATOR: Among cigarette smokers doctors discover that deaths from lung cancer increased alarmingly. Such a sharp increase in the number of deaths from a single disease always

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starts doctors hunting for facts.
The doctors found that the group of men who had never smoked at all had the lowest death rate from lung cancer. But from there on the more cigarettes the men had smoked, the higher was their death rate from lung cancer. Doctors continue to study this relationship. And new findings are being published month by month.
Of course you cannot be sure you will not get lung cancer if you never smoke. But the risk you take, that is, your chances of getting lung cancer, increases sharply if you smoke cigarettes.
The choice is yours. What will it be?
(End of videotape.)
Q. BY MR. HANTHORN: Dr. Norrell, based upon the textbooks that you've examined, based upon the filmstrips that you've examined, based upon material that you've examined that was provided to teachers in the state -- to use to teach in the states of Michigan, Arkansas and Tennessee, were the teachers following the law and getting the curriculum into the hands of the students --
MS. FLORENCE JOHNSON: Objection, Your Honor.
MR. HANTHORN: -- warnings about smoking

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and health?
THE COURT: All right. Sustained.
Q. BY MR. HANTHORN: Did you see other material of the type that we've discussed here today that you did not choose to bring here today?

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A. Oh, yes. There is -- This is just the tip of the iceberg in terms of the amount of published material, the amount of educational material that all go to the same -- the same message, that smoking could kill you and that it was hard to quit.

Q. Did you examine any sources to determine whether the message was sinking in, that is, whether students were retaining this material?

A. Yes.

Q. Do you have slides illustrating that, sir?

A. Yes. I looked at polls, especially polls of school students, to see whether the message of health risks associated with smoking was being communicated to students. The -- There are several that are useful and important. One by -- published by Pediatrics magazine in 19 --

MR. HANTHORN: Let's have slide 171, please.

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(Whereupon, Exhibit Number 171 was marked for identification.)

Q. BY MR. HANTHORN: Does this -- Is this the poll that you were talking about in Pediatrics magazine?

A. Yes. 1959 survey published in Pediatrics magazine, a survey of almost 7,000 high school students. And the groups are divided into -- On the left, the two bars on the left are senior high students. Two bars on the right are junior high students. The question was, have you ever heard that lung cancer may be caused by smoking? In other words, were these high school students aware that lung cancer might be caused by smoking? And 95 percent of the senior high students and 90 percent of the junior high students in 1959 had heard that. They were aware of the specific risk of lung cancer.

Q. Was that consistent with other polling information in 1959?

A. Yes. There was another poll.

MR. HANTHORN: Slide 172, please.

(Whereupon, Exhibit Number 172 was marked for identification.)

THE WITNESS: There was another poll done

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by Senior Scholastic magazine. And Senior Scholastic was a newspaper, sort of a magazine-type thing that was distributed in schools, right inside the schools to students. And they did an even larger survey the same year, 1959, almost 11,000 junior and senior high students. And they found that -- Those students were asked if they believed that there may be some connection between smoking and lung cancer, and 97 percent of them did believe that there was a connection between smoking and lung cancer.

Q. BY MR. HANTHORN: And did that break down into about 45 percent who believed both light and heavy smokers run a greater risk, about almost 20 percent who thought only heavy smokers ran a greater risk and about 32 percent who believed

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there may be a connection between smoking and cancer but that there was still not conclusive evidence?

A. Yes. Some students believed the connection was stronger than other students did. But 97 percent believed that smoking and lung cancer were connected in some fashion.

Q. Did Senior Scholastic report the results of its own poll?

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A. They did. They report --

MR. HANTHORN: 173, please.

(Whereupon, Exhibit Number 173 was marked for identification.)

THE WITNESS: They reported it at the time that they took it or shortly after they took the poll. And then later on in subsequent issues of Senior Scholastic they reported on that poll again as they continue to educate, emphasize to high school students the health risks associated with smoking.

Q. BY MR. HANTHORN: And is this top the April 13, 1960, the story soon after they published their poll?

A. Yes.

Q. And is the 1963 down here reporting back, an example of Senior Scholastic, continuing to report the results of that same poll?

A. Yes.

Q. Okay. Dr. Norrell, in addition to the educational material that you've looked at that was being distributed to the schools, did you also look at other literature that was distributed in school-age children on a weekly basis?

A. Well, I'm not sure I understand your

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question.

Q. Certainly. Did you go to look at material that was being distributed by, among others, the Baptist Sunday School Board?

A. Yes. I'd looked at the Sunday school literature, that is, the published Sunday school lessons that were written for use in Baptist churches. And I think that's -- I know a lot of other denominations did similar kinds of Sunday school literature. The Baptist church was particularly strong in producing lots of literature and publishing it broadly.

And the Sunday School Board is located in Nashville. And they have, of course, what they have published over the years. And those publications are very explicit in teaching the -- the physical cost of -- to people, not just to children, but to people about smoking, tying it to Biblical teachings against -- or treating the body as a temple. And these were widely distributed. They show up in other archives, other people's papers, that is, they were widely used and read.

Q. And is there a particular reason in these cases that you examined the Baptist Sunday School

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Board material, other than its wide availability?

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A. Well, both Mr. Karney and Mr. Newcomb attended the Baptist church.
Q. Now, in addition to examining materials that were distributed through the church and materials that were distributed through education, did you examine the broad area of popular culture?
A. Yes.
Q. Could you explain or give some examples to the jury of what popular culture is?
A. Well, popular culture really means popular entertainment, that is, things that people, Americans do for entertainment that tell us what we were thinking about, what we were believing in, what we find interesting and important at any one time.
I looked at a number of different examples or kinds of popular culture or popular entertainment.
Q. Did you look, for example, at humor?
A. Yes.
Q. Do you have an example of an early humorist editorial cartoon?
A. Yes.
MR. HANTHORN: If we could see Slide 174, please.
(Whereupon, Exhibit Number 174 was marked for identification.)
THE WITNESS: This is a -- This is a cartoon from Puck magazine in 1885. Puck magazine was the leading humor magazine in the United States at the time. And this particular drawing or cartoon -- Well, it came out at the time that the United States was given the Statute of Liberty by France. That's meant to be Lady Liberty there.
And the gift, of course, was very much appreciated. But the United States needed a platform to put the statute on. And the question quickly arose, who was going to pay for it?
And one of the things that was -- Well, Puck magazine said -- Well, maybe this cartoonist suggested, "Maybe we ought to put advertisements on the Lady Liberty to raise the money to pay for the platform." It was a parody. It was a joke.
But the advertisements that they suggested are interesting. And I don't know if you can zoom in a little bit, right in the middle there where it says the -- just there on her skirt there it says, "Smoke Suredeath cigarettes." That's meant to be an ad for Suredeath cigarettes. Of course there was no such thing as Suredeath cigarettes. But that that's -- The joke says to me that -- of course, that the readers of Puck magazine had to have some knowledge that people believed that cigarettes were deadly in order for them to make the joke so that people would understand it.
I think also the cartoon also tells us that people had a very cynical or pessimistic view of advertising in 1885 that advertisers would be willing to paint all over the statute of liberty.
Q. BY MR. HANTHORN: Now, did you look at

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other examples of humor or humorists?
A. Yes. I looked at writers. One of the really leading -- maybe the leading humorist of the United States in the late 19th century was the writer Mark Twain who, in addition to writing Huckleberry Finn and lots of stories, would travel around the country giving humorous lectures on various topics. And he, himself, was a habitual smoker, Mark Twain.

And Twain said commonly in these big lectures to thousands of people that quitting smoking was the easiest thing in the world. He had done it hundreds of times himself.

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Q. BY MR. HANTHORN: And what -- I'm sorry.
A. And the joke being, of course, that he never really quit because he couldn't.
Q. And what significance, if any, is this type of humor, whether it's Mark Twain talking about quitting smoking hundreds of times or putting advertisements on Lady Liberty? Tell us about public perceptions and attitudes about smoking during this time frame.
A. Well, for the public to get the joke, for the public to understand the joke, they have to understand the reference. And the reference that underlies this, of course, are several: One, that smoking is habit-forming or addictive; that smoking is deadly for the Suredeath cigarettes. And those kinds of references can only work, can only be funny to the public if the public already understands the reference, which means that the public commonly knew these things about cigarette smoking.
Q. Now, did you also examine slang as a window to viewing popular culture?
A. Yes.
Q. What are some of the slang terms for cigarettes that have been used?

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A. Well, we already talked about "the little white slaver," which was one of the slang terms. A very common slang term for cigarettes has always been "coffin nails." Another very commonly used slang term is "cancer sticks." And I looked at the various ways those have -- those terms have been used. And they too, of course, refer to the belief that cigarettes are deadly.

MR. HANTHORN: Number 175, please.

(Whereupon, Exhibit Number 175 was marked for identification.)

Q. BY MR. HANTHORN: What's this headline from the Annapolis Evening Capital in 1886?
A. This is an early use of the slang term "coffin nails." "The coffin nails of our youth" is a headline here from a newspaper in 1886. Just shows that this term "coffin nails" was commonly used enough in 1886 that the headline writer at this Maryland newspaper would know that he could use it and everybody would understand what he was talking about.
Q. Now, did the term "coffin nails" drop out of use so that by, say, the 1950s it was gone or

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limited to Maryland?
A. No. It was used here in Tennessee as well.
MR. HANTHORN: 176, please.
(Whereupon, Exhibit Number 176 was marked for identification.)
THE WITNESS: And it was used down through the years.
I found a reference in The Commercial Appeal from 1956. This is a letter from a Memphis citizen to The Commercial Appeal about health risks. And you note that the letter -- The headline above the letter in The Commercial Appeal is "Coffin Nails." So "coffin nails" was used down through at least until 1956 and well beyond.
And the subject of the letter, of course, also and speaks to awareness.
This writer said: "One does not need a doctor's advice as to harmful effects of drawing poisonous smoke down into your lungs dozens and dozens of times each day. Your common sense tells you that it's bound to be exceedingly harmful, if not the cause of the rise in lung cancer."
Q. BY MR. HANTHORN: Now, in addition to the slang terms that have been used throughout the ages, have you also looked at music to see how it reflected popular attitudes?
A. Yes.
Q. Have there been country and western and popular music references to cigarettes?
A. Yes. Quite a lot of them. Some of them very popular examples of it. One of the -- One of the most common, most widely known was the 1947 country music -- it was also a pop song too -- called "Smoke, Smoke, Smoke That Cigarette," 1940s. It was written -- initially recorded by Tex Williams who was a country artist. Lots of other people recorded it later. But at the same time it was at the top of the pop charts and at the top of the country charts. "Smoke, Smoke, Smoke Those Cigarettes."
Q. Now, understanding that this is prior to the MTV generation, do you nonetheless have a video clip illustrating that song?
A. Yes.
MR. HANTHORN: 177.
(Whereupon, Exhibit Number 177 was marked for identification.)
(Whereupon, the following videotape was played.)
TEX WILLIAMS: Now, I'm a feller with a heart of gold, with the ways of a gentleman, I've been told, the kind of a feller that wouldn't even harm a flea.
But if me and a certain character met, the guy that invented the cigarette, I'd murder that son-of-a-gun in the first degree. Now, it ain't 'cause that I don't smoke myself. And I don't reckon they hinder your health. I've smoked them all my life, and I ain't dead yet. But

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nicotine slaves are all the same at a pettin' party or a poker game. Everything's gotta stop while they have that cigarette.

Smoke, smoke, smoke that cigarette. Puff, puff, puff. And if you smoke yourself to death, tell St. Peter at the Golden Gate that you hate to make him wait, but you just gotta have another cigarette.

(End of videotape.)

THE WITNESS: Believe it or not, it made it to the top of the charts.

Q. BY MR. HANTHORN: Did Tex Williams attempt to recapture the magic of that song some three years later?

A. Yeah. He wrote another song, recorded it, a very similar message called: "With men who know tobacco best." The full title is "With men

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who know tobacco best, it's women two to one." And this played on a popular cigarette advertising campaign at the time for Lucky Strikes. And the campaign was "With men who know tobacco best, it's Luckies two to one." And Tex Williams usually playing on the ad came up with a song that changed the last line to "it's women two to one."

MR. HANTHORN: 178.

(Whereupon, Exhibit Number 178 was marked for identification.)

Q. BY MR. HANTHORN: We'll spare the jury hearing a song that sounds remarkably like the prior song. But is this an example of sheet music from "With men who know tobacco best, it's women two to one"?

A. Yes.

Q. What significance or public awareness or common knowledge do you attribute to the fact that you have these types of songs out there on the charts and raising in the case of at least one to number one on both the country and popular charts?

A. Well, it shows that the public was comfortable enough, it's familiar enough with this information that's conveyed in the lyrics to accept the song and to be amused by it and not to be

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surprised by it. If they had been surprised, the song wouldn't have been so popular. So it just shows that -- what the lyrics of these songs say about cigarettes was clearly understood among the vast majority of Americans.

Q. In addition to reflecting the common knowledge and awareness, did the fact that these were being played on the radio have any impact on increasing that level of common knowledge or awareness?

A. Yes. Millions of people hear this song on the radio over and over again if it's the number one song. Remember, radio was far more important in 1947 as a means of entertainment and education than it is now. And there may be fewer radio stations. So that this just promotes, you know, on a daily basis the awareness that there are hazards that come from smoking cigarettes, even if they're communicating it in a humorous way.

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Q. Now, in addition to songs, were movies and cartoon movies another form of popular culture?
A. Yes.
Q. Did that popular culture both reflect an increased public awareness as well?
A. Yes. Movies and cartoons were of course

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far more important in a time before television -- now, we're talking in the late 40s -- about that.
Q. Did you bring a clip from -- a poster from a Walt Disney film?
A. Yeah. In 1951 Walt Disney produced a widely viewed cartoon called "No Smoking," in which Goofy, the character, tries to quit smoking and all the horrors that he experiences and humorous -- in a humorous vein for trying to quit smoking and is unable to do so, viewed of course in thousands of theatres.
Q. Now, that's Exhibit 179, is the poster from that movie?
A. Yes.
(Whereupon, Exhibit Number 179 was marked for identification.)
Q. BY MR. HANTHORN: In addition to that, did you bring a videotape of various movie excerpts that have played through the years that have a bearing on common knowledge or awareness of the risks of cigarette smoking?
A. Yes. Movies through the years of course have depicted people smoking. And the movies also tell us what people felt about smoking. And we

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have some examples of how smoking was viewed in a series of Hollywood movies.
MR. HANTHORN: Let's play Exhibit 180, please.
(Whereupon, Exhibit Number 180 was marked for identification.)
(Whereupon, the following videotape was played.)
("The Strawberry Blonde," 1941.)
MAN: I wanna have a smoke.
WOMAN: May I have one too, please?
MAN: Sure. Hey, don't tell me you smoke?
WOMAN: Only when I'm bored.
MAN: Well, you mother of bloomer girl, nicotine fiend. Are there anymore at home like you?
("Saboteur," 1942.)
MAN: Hey, Buddy, hold the wheel awhile, will you, while I animate this thing. I'm a nicotine addict.
("Thirty Seconds over Tokyo," 1944.)
MAN NUMBER ONE: I've been thinking. Cigarettes sell for 60 cents a carton on the boat here, but in Chun King I hear the boys will pay

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seven bucks.
MAN NUMBER TWO: Yeah?
MAN NUMBER ONE: So I figure I may load the deck with coffin nails.

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MAN NUMBER TWO: Hey, that's an idea.
("From Here to Eternity," 1953.)
MAN NUMBER ONE: Hello, citizens.
WOMAN: Hi.
MAN NUMBER TWO: Hey, where you been?
MAN NUMBER ONE: Hi, pals. I've been to three bars, and I've put a dent in all three of them.
WOMAN: Yeah. You look it.
MAN NUMBER ONE: Give me a nail. I'm hungry for a nail.
MAN NUMBER TWO: What are you doing in uniform?
MAN NUMBER ONE: Kind of figuring on joining the Army. Or maybe I'll go to Mexico and become a cowboy.
("Heaven knows Mr. Allison," 1957.)
WOMAN: Well, didn't they give you any religious teaching in the orphanage?
MAN: Oh, sure. Every Sunday some skinny old crack used to come around and go on about what

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cigarettes will do to your insides and -- things.
("Damn Yankees," 1958.)
MAN NUMBER ONE: Don't you just know what I'm doing without all that effort?
MAN NUMBER TWO: No. Joe, I have to do most things the hard way. The only thing that comes really easy is the cigarette trick, and now I'm trying to break myself of the filthy habit.
("But Not for Me," 1959.)
MAN NUMBER ONE: Save your knuckles. I'm no track star.
MAN NUMBER TWO: What have you got against fresh air?
MAN NUMBER ONE: It's too damp, irritates my cough.
MAN NUMBER TWO: Your cough is the illegitimate child of you and those cigarettes.
MAN NUMBER ONE: You -- You smoke.
MAN NUMBER TWO: Yeah. I drink too as recreation, not as a disguised form of suicide.
("You Only Live Twice," 1967.)
MAN NUMBER ONE: I hope you are not taking any risks yourself, Mr. Fisher.
MAN NUMBER TWO: Me, I never take any risks.

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MAN NUMBER ONE: You forgive me for saying so, but I think you are taking one now.
MAN NUMBER TWO: I am?
MAN NUMBER ONE: Uh-huh. You should give up smoking. Cigarettes are very bad for your chest.
MAN NUMBER THREE: The firing power inside my crater is enough to annihilate a small army. You can watch it all on TV. It's the last program you're likely to see.
MAN NUMBER TWO: Well, if I'm going to be forced to watch television, may I smoke?
MAN NUMBER THREE: Yes. Give him his cigarettes. It won't be the nicotine that kills you, Mr. Bond.

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(End of videotape.)
Q. BY MR. HANTHORN: What do references like these in movies throughout the ages, popular movies, tell you about common knowledge?
A. Well, they reflect the culture of the time. That is, they reflect the understandings that people already have. And then they promote them and send them out even further. They're powerful movies, an especially powerful medium. And people understand the references of health

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risks that come through the movies.
Q. Now, did many famous actors and actresses smoke in the movies particularly in the 1940s and 1950s?
A. Yes. Movies are usually attempts to mirror real life in the 1940s. More than half the population smokes. So the characters in movies were smoking.
Q. Did the fact that movie stars were smoking in any way cause the public to be less aware of the risks of smoking?
MS. FLORENCE JOHNSON: Objection, Your Honor.
THE COURT: Overruled.
Q. BY MR. HANTHORN: You may answer.
A. The fact that actors and characters in films were smoking did not prevent movies from communicating the larger message of the reference to coffin nails, to the constant -- to nicotine fiends, the addictive qualities of it or to the deadly impact of smoking. That's there at the same time that you see characters in movies through these years smoking along.
MR. HANTHORN: Your Honor, we can either break now, or I'm about to enter into another major

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topic.
THE COURT: All right. Well, we've only got about five minutes or so, so this will probably be a good time to break.
Well, ladies and gentlemen, this will conclude our work for this week. I want to thank you very much for your patience and cooperation with us. You are doing an excellent job in being attentive and keeping up with us and being timely.
And put this matter aside. Don't discuss it among yourselves or with anyone else. And we will excuse you until 10:00 o'clock on Monday.
(Whereupon, the jurors were excused from the courtroom.)
(Whereupon, the evening recess ensued at 4:24 p.m.)

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COURT REPORTER'S CERTIFICATE

STATE OF TENNESSEE:

COUNTY OF SHELBY:

I, LORI-ANN MASON, RPR, do hereby certify:

1. The foregoing transcript of proceedings was taken before me at the time and place stated in the foregoing styled cause with the appearances as noted;

2. Being a Court Reporter, I then reported the transcript of proceedings in Stenotype to the best of my skill and ability, and the foregoing pages contain a full, true and correct transcript of my said Stenotype notes then and there taken;

3. I am not in the employ of and am not related to any of the parties or their counsel, and I have no interest in the matter involved.

Lori-Ann Mason, RPR
Notary Public at Large
State of Tennessee

My commission expires:
August 29, 2001

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